

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 13-0080

In re:

JUSTIN JENNE.,  
Doing business as  
JUSTIN JENNE STABLES and  
JUSTIN JENNE STABLES at FRAZIER and FRAZIER FARMS<sup>1</sup>,

Respondent.

Before: Administrative Law Judge Janice K. Bullard

Appearances:

Sharlene Deskins, Esq., for Complainant

Justin Jenne, pro se

DECISION AND ORDER

I. INTRODUCTION

The above captioned matter involves an administrative disciplinary proceeding initiated by the Administrator of the Animal and Plant Health Inspection Service (“APHIS”), an agency of the United States Department of Agriculture (“USDA”; “Complainant”), against Justin Jenne, doing business as Justin Jenne Stables and Justin Jenne Stables at Frazier and Frazier Farms (“Respondent”; “Jenne”). Complainant alleges that Respondent violated the Horse Protection Act, as amended, 15 U.S.C. §§ 1821-1831 (“the Act”; “HPA”), and the Regulations and Standards issued under the Act, 9 C.F.R. §§ 11.1-11.40; a2.1-12.10. (“Regulations”;

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<sup>1</sup> Other Respondents were named but entered into consent decisions with Complainant.

“Standards”). The instant decision<sup>2</sup> is based upon consideration of the record evidence; the pleadings, arguments and explanations of the parties; and controlling law.

## II. ISSUE

Did Respondent violate the HPA, and if so, what sanctions, if any, should be imposed because of the violations?

## III FINDINGS OF FACT AND CONCLUSIONS OF LAW

### A. Procedural History

In a complaint filed on November 14, 2013, (“the Complaint”) Complainant alleged that Respondent willfully violated the Act and the Regulations on or about April 16, 2009, when he entered the horse “Jose’s Flamingo [Dancer]”<sup>3</sup> at a show while the horse was sore. Respondent timely filed an Answer and the parties exchanged evidence and filed submissions. On March 11, 2013, Respondent moved for the dismissal of the complaint, which I denied by Order issued March 18, 2013. I denied a renewed motion for dismissal by Order issued April 10, 2013.

After extensions of time and continuances for procedural reasons, a hearing was held on March 11, 2014<sup>4</sup>, by means of an audio-visual connection between Washington, DC and Nashville, Tennessee. Respondent appeared at the Nashville site, and I presided at the Washington site, where Complainant’s counsel and witnesses appeared. I admitted to the record the exhibits proffered by Complainant (CX-1 through CX-8; CX-16A and B). Respondent did not proffer any documentary evidence at the hearing. I heard the testimony of Respondent and

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<sup>2</sup>In this Decision & Order (“D&O”), the transcript of the hearing shall be referred to as “Tr. at [page number]. Complainant’s evidence shall be denoted as “CX-[exhibit #]” and Respondents’ evidence shall be denoted as “RX-[exhibit number]”. Exhibits admitted to the record sua sponte shall be denoted as “ALJX-[exhibit number]”.

<sup>3</sup>The evidence shows that the horse’s full name is “Jose’s Flamingo Dancer”, despite being identified in some documents as “Jose’s Flamingo”.

<sup>4</sup>The hearing in this matter was held in conjunction with a hearing on another complaint also alleging violations of the Act by Mr. Jenne, Docket No. 13-0308. The instant D&O may refer to Mr. Jenne’s testimony in that case.

witnesses for Complainant. I held the record open for Respondent to submit a statement by his treating veterinarian, which was submitted and exchanged with Complainant on March 28, 2014, and is hereby admitted to the record as “RX-1”. Complainant’s counsel timely filed written closing argument on May 14, 2014. Respondent did not file closing argument. The record is closed and this matter is ripe for adjudication.

## **B. Summary of Factual History**

Justin Jenne started riding horses when he was four years old and started competing in shows of Tennessee Walking Horses when he was six. Tr. at 73. Mr. Jenne testified that “horses are [his] life” and that “[he] would never engage in any type of soring or potentially hurt a horse in anyway or allow anyone that works for [him] to do so.” Id. Mr. Jenne trains horses, and specializes in training two and three year old horses, which are usually brought to train at his facility. Tr. at 73. Most of the horses he trains have not been ridden before, and Mr. Jenne and his staff teach the horses all that they know. Id. At the time pertinent to this proceeding, Mr. Jenne employed two people who fed the animals and cleaned the stalls. Tr. at 79.

In April, 2009, Mr. Jenne brought a three year old mare named Jose’s Flamingo Dancer to the Spring Jubilee Charity Horse Show at Harrodsburg, Kentucky. Tr. at 73-74. The horse had never been off the farm for a show before, and had never been inspected by any inspector employed to examine horse show entrants. Tr. at 74. Mr. Jenne estimated that he had trained the horse for a little more than a year. Tr. at 78. Mr. Jenne filled out all of the entry forms for the horse to participate in the show. Tr. at 76.

Mr. Jenne was excited to show the horse for the first time, and hauled her from Shelbyville, Tennessee to the show. Tr. at 74. When he arrived, he observed that very few people were participating, but he felt confident that the mare would pass inspection. Id. The horse was

checked by people associated with a Horse Industry Organization (“HIO”)and then was thermographed and inspected by Dr. Kirsten of USDA. Tr. at 74-75. Mr. Jenne found Dr. Kirsten to be aggressive in his inspection, and he believed that his horse reacted to the inspection out of fear. Tr. at 75.

Mr. Jenne could not define a “sore” horse, but he had read the rules concerning sore horses and had “always been under the impression that a sore horse would lead poorly and just look unhealthy. . .” Tr. at 77. He testified that Jose’s Flamingo Dancer led and presented herself well and Mr. Jenne maintained that “her feet are absolutely pristine. Not a hair off her ankles. No scars of any kind”. Tr. at 75.

After the inspection of Jose’s Flamingo Dancer at the Spring Jubilee Charity Show, Mr. Jenne decided not to present any of his other horses for inspection. Tr. at 79. Mr. Jenne pointed out that according to the entry form for the show, his horse was the first examined, and then everyone behind him withdrew their horses. Tr. at 61-62. He recalled that 14 or 15 classes of the show were cancelled, and out of 150 to 200 horses entered in the show, only about thirty horses participated. Tr. at 62.

Mr. Jenne called his attending veterinarian of three years, Dr. Steven Mullins, during his trip home, and Dr. Mullins examined the horse at 7:00 a.m. the next morning. Id. In a written statement, Dr. Mullins observed that he had examined the horse on Friday April 17, 2009, at 7:00 a.m., sixteen hours after the horse was examined at the show, and found nothing wrong. RX-1. The animal was unresponsive upon palpation of the pastern area, and gave no indication to Dr. Mullins that she was “sore”. Id. Dr. Mullins was at Mr. Jenne’s facility on a daily basis and had examined and treated Jose’s Flamingo Dancer since her arrival at Respondent’s barn. Tr. at 79.

Mr. Jenne trained the horse with six-ounce aluminum rollers and as much as a six-ounce chain that went on its pastern area at least five days a week. Tr. at 82; 87. He described the roller as a strap with a bead on it that he believed was better for the condition of horses' pasterns. Tr. at 87. Mr. Jenne explained that the horse was not required to pick her feet up during the application of the chains, compared with how long her feet were held up during an inspection. Id. He did not wrap her pasterns during training, but did wrap her legs with shipping boots to protect them during the haul to the show. Tr. at 83. The protective boots are made of cloth and are attached around the leg by Velcro closings. Tr. at 84. Mr. Jenne denied using grease to train his horses, but has used it at shows, where exhibitors are provided with lubricant for optional use. Tr. at 87-88. When he has used lubricant, he removes it in the course of spraying the horse off, similar to a person taking a shower. Tr. at 88.

Dr. Peter Kirsten is a licensed veterinarian who has worked for APHIS since 1988 as a Veterinarian Medical Officer ("VMO"). Tr. at 27-28. He is currently a supervisory animal care specialist and was so at the time of his assignment as USDA veterinarian at the Spring Jubilee Charity Horse Show in 2009. Tr. at 28. Dr. Kirsten had no "direct memories about [Jose's Flamingo Dancer] but [had] direct memories of being at the show and some of the incidents that occurred there". Tr. at 29.

Dr. Kirsten videotaped<sup>5</sup> some portions of the examination of Jose's Flamingo Dancer. Tr. at 32-34; CX-16A. Before he examined the horse, two Designated Qualified Persons ("DQP") examined her. Tr. at 34. DQP McCammon's examination was not recorded, but DQP Acree's examination was. Id. Dr. Kirsten described how Mr. McCammon checked the horse's left leg

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<sup>5</sup> The videotape was shown on a computer at the hearing via a DVD.

first by “palpating the posterior part of the pastern, the pocket, looking for reactions.” Tr. at 34. Dr. Kirsten observed that the examination twice produced a reaction from the horse on the left side towards the heel. *Id.* Dr. Kirsten believed that Mr. Acree’s examination also produced a reaction on the right side. Tr. at 35. After their examinations, the DQPs consulted and told Mr. Jenne that they would issue a ticket for a sore left foot. *Id.*

Dr. Kirsten wanted to examine the horse because he thought that Mr. McCammon’s examination had produced a reaction on both feet. *Id.* Dr. Kirsten also did not believe that Mr. Acree asserted enough pressure when he examined this horse, and others. Tr. at 60-61. Dr. Kirsten explained, “[d]igital palpation is a regular medical diagnostic tool to determine where it hurts...and we’re instructed to . . . apply enough pressure to blanch the thumbnail in order to determine where it hurts.” Tr. at 63.

Despite his concerns about Mr. Acree’s light pressure, USDA typically gave DQPs a chance to improve their technique. Tr. at 65. Although DQPs are licensed by horse industry organizations, they are trained by USDA and the industry organization is licensed by USDA. Tr. at 65-66.

When Dr. Kirsten tested Jose’s Flamingo Dancer’s lateral left limb, he observed that “the horse jerked ahead, pulls back the limb with a strong leg withdrawal”. Tr. at 36. He found consistent strong leg withdrawals on the left side, and then found a strong leg withdrawal on the right side. Tr. at 37. Dr. Kirsten advised Mr. Jenne that he would “prepare a Government case on the two-foot sore horse” and asked Mr. Jenne to talk to an investigator. Tr. at 37. Dr. Kirsten made and kept notes of his inspection. CX-6.

Dr. Kirsten believed that the horse would have experienced pain while moving, particularly if it had action devices on it. Tr. at 41. Action devices would make contact with the

horse's pastern and the pain would cause the horse to lift its leg in a dramatic way. Id. However, he confirmed that the horse moved smoothly when walking and did not demonstrate lameness. Tr. at 45. Dr. Kirsten testified that some sore horses demonstrate pain when being led, but some do not. Tr. at 67.

A thermography exam was performed on the horse before the physical examinations, and an image of the test produced different views of the horse's leg. Tr. at 48; CX-16B. A thermography measures the temperature of the skin, which is demonstrated by colors ranging from red for the warmest areas and white to blue for cool areas. Tr. at 49. Dr. Kirsten testified that the thermography results showed an abnormal area, in that some areas were excessively hot and some were excessively cool. Tr. at 51. He concluded that the different temperatures suggested that the horse had been sore by chemical means. Tr. at 50. Dr. Kirsten's examination of the horse led him to the conclusion "that it was either by mechanical or chemical means that the horse had been sore." Tr. at 53.

Dr. Kirsten did not perform the thermography and he conceded that he could not draw any conclusion about whether a horse was sore from the test. Tr. at 56-57. Test results were compared to an image of a "normal" horse. Dr. Kirsten could not say where the normal image had been taken, or what the model horse had been doing before the image was made, but he speculated that the model "horse was probably resting or had rested". Tr. at 57-58. He thought that an exercised horse would produce warm spots on a thermograph, making the test abnormal. Tr. at 58. Dr. Kirsten did not believe that the leg protectors that Jose's Flamingo Dancer wore during transportation would have caused warm spots on a thermography. Tr. at 55. Although Dr. Kirsten testified that a caustic agent could be used to make a horse sore, he did not see any physical signs of a caustic agent on the horse. Tr. at 59.

Upon cross examination, Mr. Jenne asked Dr. Kirsten to explain why he stated in his affidavit (CX-7) that Mr. Jenne had been irate at Dr. Kirsten during his examination when the videotape clearly did not reveal such behavior. Tr. at 42. Dr. Kirsten's explanation was that he wrote his affidavit twelve or so hours after the incident, based upon his recollection. Tr. at 42.

APHIS Investigator Steven Fuller attended the Spring Jubilee Charity Horse Show in April, 2009, as part of his official duties. Tr. at 16-18. He gathered documents that including Respondent's entry form (CX-2) and a listing of horses in certain classes at the show that included Mr. Jenne's horse in class number 16 (CX-3). Tr. at 18-19. Mr. Fuller was also provided with a list of horses that were identified as being in violation of the HPA by DQPs for the Kentucky Walking Horse Association Horse Industry Organization. Tr. at 19-20. He also acquired a summary of violations that included Jose's Flamingo Dancer that APHIS had prepared. Tr. at 20-21. Mr. Fuller took affidavits of persons related to the inspection and ownership of the horse. Tr. at 21. Mr. Fuller explained that DQP's are required to attend annual training conducted by APHIS to assure that they can properly examine horses. Tr. at 23.

### **C. Prevailing Law and Regulations**

In 1970, Congress passed the HPA, prohibiting the showing, sale, auction, exhibition, or transport of sored horses. See, H.R. Rep. No. 9101597, 91st Cong., 2d Sess. (1970), reprinted in 1970 U.S. Code Cong. & Admin. News 4870, 4871-72. In passing the HPA, Congress observed that the practice of deliberately injuring show horses to improve their performance was "cruel and inhumane." 15 U.S.C. § 1823. The Act defines the deliberate injuring of show horses as "soring", and includes the application of an irritating or blistering agent to any limb of a horse; of injecting any tack, nail, screw or chemical agent on any limb of a horse; or using any practice on a horse that reasonably can be expected to cause the animal suffering, pain, distress,



inflammation, or lameness when “walking, trotting, or otherwise moving”. 15 U.S.C. § 1821(3)(A)(B)(D).

APHIS was charged with enforcing the HPA through inspections by USDA employed Veterinarian Medical Officers (“VMO”), but when the program was underfunded, Congress allowed the horse industry to train its own inspectors, called Designated Qualified Persons (“DQP”). *See*, H.R. No. 94-1174, 94th Cong., 2d Sess. (1974) at 4-5, 6, *reprinted in* 1976 U.S. Code Cong. & Admin. News 1696, 1699, 1701 (15 U.S.C. § 1823(c); 15 U.S.C. § 1823(e)). In 1979, USDA promulgated regulations that set forth the requirements that DQPs must meet in order to inspect horses. 9 C.F.R. § 11.7. DQPs also must be licensed by a Horse Industry Organization (HIO) certified by the USDA. 9 C.F.R. § 11.7

In 1976, Congress revised the definition of “sore” to eliminate requirements that the soring be done with the intent to affect the horse's gait, and prohibited the showing of a sore horse or allowing a sore horse to be shown. *See*, H.R. Rep. No. 94-1174 at 2, *reprinted in* 1976 U.S. Code Cong. & Admin. News 1696; 15 U.S.C. § 1824(2). The 1976 amendment also added a statutory presumption that a horse is sore if it manifests abnormal sensitivity or inflammation in both of its forelimbs or hind limbs. 15 U.S.C. §§ 1821(3), 1825(d)(5). Courts have confirmed that intent to sore a horse or knowledge that a horse is sore is not a condition precedent to liability. A horse owner need only allow a “sore” horse to enter a horse show, and he need not have knowledge that the horse is sore, or be the source of the soring. *Stamper v. Sec’y of Dep’t of Agric.*, 722 F.2d 1487, 1489 (9<sup>th</sup> Cir. 1984); *McCloy v. Sec’y of Dep’t of Agric.*, 351 F.3d 447, 451 (10<sup>th</sup> Cir. 2003); *Thornton v. Sec’y of Dep’t of Agric.*, 715 F.2d 1508, 1511-1512 (11<sup>th</sup> Cir. 1983).

It has been held that the presumption of soreness set forth in the HPA may be rebutted. *Landrum v. Block*, No. 81-1035 (M.D. Tenn. June 25, 1981), 40 Agric. Dec. 922 (1981). The 11<sup>th</sup> Circuit Court of Appeals also acknowledged that the presumption of soreness is rebuttable. *Zahnd v. Sec'y of Dep't of Agric.*, 479 F.3d 767, 772 (11th Cir. 2007) .

In 1992, Congress attempted to require more proof of soring than digital palpation by a VMO when it limited how USDA could use funds to enforce the HPA. Congress directed “that none of these funds shall be used to pay the salary of any Departmental veterinarians or Veterinary Medical Officer who, when conducting inspections at horse shows, exhibitions, sales, or auctions under the Horse Protection Act, as amended (15 U.S.C. 1821-1831), relies solely on the use of digital palpation as the only diagnostic test to determine whether or not a horse is sore under such Act.” *See*, Pub. L No. 101-341, 105 Stat. 873, 881-82 (1992).

Regardless, pursuant to the language of the HPA, a horse shall be presumed to be sore if it manifests abnormal sensitivity in both of its forelimbs or both of its hind limbs. The USDA Judicial Officer (“JO”) has stated specifically that “[t]he Secretary of Agriculture’s policy has been that palpation alone is a reliable method to determine soring. Palpation alone to determine whether a horse is sore has not been found suspect by the United States Court of Appeals for the Sixth Circuit Court, which has held that a finding of soreness based upon the results of palpation alone is sufficient to invoke the rebuttable presumption that a horse is sore.” *In re: Bowtie Stables, LLC., et al.*, 62 Agric. Dec. 580, 599 (July 23, 2003), citing *Bobo v. Sec'y of Agric.*, 52 F.3d 1406, 1413 (6th Cir. 1995).

#### **D. Discussion**

Dr. Kirsten concluded upon digital palpation that Jose’s Flamingo Dancer was sore. He agreed with Respondent that the horse moved freely and had no physical signs of soring by any

means. Although the VMO attempted to use a thermographic image<sup>6</sup> of the horse's limbs to support his conclusions, he conceded that the test was open to interpretation and not a reliable indicator of soreness. Even if the thermographic test represented reliable evidence of soring, I would give limited weight to Dr. Kirsten's testimony about the test. Dr. Kirsten did not take the images, has no special training in interpreting thermographic images, and was unable to describe the posture of the horse whose image represented a "normal" thermograph, or describe where the "normal" image was taken.

I further am unable to entirely credit Dr. Kirsten's testimony. In an affidavit drafted the day after his examination of Jose's Flamingo Dancer, the VMO stated that Mr. Jenne "yelled at me during my examination of the right leg that I shouldn't check like that by 'gouging with my finger.' I looked back at him and said 'I am not gouging.' " CX-7. I saw no evidence on the audio-video recording of the VMO's examination that Mr. Jenne was anything but cooperative, and therefore Dr. Kirsten's testimony is undermined by such a glaring inconsistency. However, Dr. Kirsten's credibility regarding his examination findings is not tainted, as he took contemporaneous notes about the examination results, and based his conclusions upon those notes.

The evidence also suggests that Dr. Kirsten was determined to find the horse sore. He conducted his examination because he disagreed with the findings of the two DQPs who had examined Jose's Flamingo Dancer. Tr. at 35. Dr. Kirsten was not satisfied with the intent of the DQPs to issue a ticket to Mr. Jenne for unilateral soring, which would not warrant a federal investigation. Dr. Kirsten believed that Mr. McCammon, the DQP who first examined the horse

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<sup>6</sup> I acknowledge that I initiated the discussion about the thermograph, but no objection was made to the questioning and a DVD of the test images was proffered by counsel for Complainant. Tr. at 69.

identified bilateral soring. Dr. Kirsten did not believe that DQP Acree exerted enough force in his palpation of the horse's pasterns.

Mr. Acree's examination was videotaped, while Mr. McCammon's was not, which casts suspicion upon the audio-visual evidence and Dr. Kirsten's conclusions about the DQP findings. However, considering Dr. Kirsten's authority to overrule the determinations of the DQPs (Tr. at 39-40), and considering Dr. Kirsten's reliance upon his examination notes when reaching his opinion about the horse's soreness, I accord weight to the portions of audio-visual evidence that corroborate Dr. Kirsten's examination findings.

It is axiomatic that horses who are permitted to wear chains of any weight during training may exhibit reactions to the exertion of enough pressure to blanch the thumb, as Dr. Kirsten required. In addition, since none of the three examiners reached the same conclusions about the horse's condition, the palpation test hardly meets the standard of an objective measure of soring. Further, Dr. Kirsten did little more than hazard a guess about the cause of the animal's soreness, testifying that it was made sore by either mechanical or chemical means. Tr. at 53. In my experience, such speculative opinions by experts without reliable scientific proof would be accorded little probative weight, if found admissible at all. See, Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993). However, the case law developed under the HPA makes it clear that only the presumption of soreness must be established, and identifying the cause of the soreness is not necessarily material to concluding that a horse is sore.

I am skeptical about the reliability of the method used to determine whether a horse is sore in general, and whether this particular horse was sore on April 16, 2009, as three examiners found inconsistent result, a thermography examination is of little value, and Complainant's primary witness testified inconsistently with the evidence. Despite my doubts, it is clear that the

legal precedent demonstrates that for purposes of the HPA, Jose's Flamingo Dancer must be presumed to have been sore based upon the findings of a USDA VMO Kirsten's palpation. The USDA JO has routinely concluded that the opinions of USDA veterinarians as to whether a horse is sore are more persuasive than the opinions of DQPs. *In re: C. M. Oppenheimer*, 54 Agric. Dec. 221 (1995); *In re: William Dwaine Elliott*, 51 Agric. Dec. 334 (1992), *aff'd*, 990 F.2d 140 (4th Cir.), *cert. den.* 510 U.S. 867 (1993); *In re: Pat Sparkman*, 50 Agric. Dec. 602 (1991); *In re: Larry Edwards*, 49 Agric. Dec. 188 (1990), *aff'd. per curiam*, 943 F. 2d 1318 (11th Cir. 1991), *cert. den.* 503 U.S. 937 (1992).

Once the presumption of soreness is established, the burden of persuasion shifts to Respondent to provide proof that the horse was not sore, or that its soreness was due to natural causes. I accord full weight to the testimony of Mr. Jenne, and find it reasonable to conclude that his horse reacted to being physically manipulated in an unaccustomed manner by strangers in a strange place. The horse was exposed to Mr. Jenne and two other individuals exclusively for more than a year, and Mr. Jenne worked extensively with her during training. Mr. Jenne's intimate knowledge of the horse lends support for his conclusions about the source of the horse's reactions.

In the end, however, Mr. Jenne's conclusions about the cause of Jose's Flamingo Dancer's reactions are also speculative and not entitled to great weight. The case law suggests that the presumption of soreness must be rebutted by more proof than speculation about other natural causes, even when the evidence proffered to rebut the presumption consists of a reasoned medical opinion by a licensed veterinarian with experience in an equine practice. See, *In re: Perry Lacy*, 66 Agric. Dec. 488 (2007); *aff'd, Lacy v. U.S.*, 278 Fed. Appx. 616 (6th Cir. 2008).

I also credit Dr. Mullins' examination findings. However, as Dr. Mullins himself noted, he could not speak to the condition of the horse at the show, and his findings add little probative value regarding that issue. It has been held that it is not unusual for a horse to be found sore at one examination and not sore at another. *In re: Timothy Fields and Lori Fields*, 54 Agric. Dec. 215, 219 (1995).

I find that Respondent's evidence is insufficient to rebut the presumption. Despite holdings by courts that the presumption may be rebutted by a Respondent, the history of Decisions involving the HPA by USDA's Judicial Officer ("JO") and many Administrative Law Judges ("ALJs") strongly suggests that rebutting the presumption is highly unlikely in any case where an APHIS Veterinary Medical Officer concludes that the horse is sore after being palpated.<sup>7</sup> This Decision joins their numbers, as I am bound by legal precedent. I find that Respondent must be held liable for entering a horse that was sore for exhibition on April 16, 2009, at the Spring Jubilee Charity Horse Show, in violation of the HPA. See, 15 U.S.C. § 1825(d)(5). In so finding, I am mindful of the words of Fulton J. Sheen: "The big print giveth, and the fine print taketh away."

#### **E. Sanctions**

The purpose of assessing penalties is not to punish actors, but to deter similar behavior in others. *In re David M. Zimmerman*, 56 Agric. Dec. 433 (1997). In assessing penalties, the Secretary must give due consideration to the size of the business, the gravity of the violation, the

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<sup>7</sup> See: *In re: Ronald Beltz and Christopher Jerome Zahnd*, 64 Agric. Dec. 1438 (2005), *rev.*, 64 Agric. Dec. 1487 (2005); *Motion for reconsideration denied*, 65 Agric. Dec. 281 (2006); *Aff'd. sub nom. Zahnd v. Sec'y of the Dep't of Agric.*, 479 F. 3d 767 (11<sup>th</sup> Cir. 2007). In *In re: Perry Lacy*, 65 Agric. Dec. 1157 (2006); 66 Agric. Dec. 488 (2007); 278 Fed. Appx. 616 (6<sup>th</sup> Cir. 2008).

person's good faith and history of previous violations. *In re Lee Roach and Pool Laboratories*, 51 Agric. Dec. 252 (1992).

Any person who violates the HPA shall be subject to a civil penalty of not more than \$2,200 for each violation. 15 U.S.C. § 1825(b)(1); 28 U.S.C. § 2461; 7 C.F.R. § 3.91(b)(2)(vii). In addition to any fine or civil penalty assessed under the HPA, any person who violates the Act may be disqualified from showing or exhibiting any horse, judging or managing any horse show, horse exhibition, or horse sale or auction for a period of not less than one year for the first violation and not less than five years for any subsequent violation.

It has been held that most cases involving violation of the HPA warrant the imposition of the maximum civil penalty per violation. *In re: Jackie McConnell, Cynthia McConnell, and Whitter Stables*, 64 Agric. Dec. 436, 490 (2005), *aff'd* 198 F. App'x 417 (6<sup>th</sup> Cir. 2006). It further has been held that disqualification is appropriate in almost every HPA case, in addition to civil penalties, including cases involving a first-time violator of the Act. *In re: Kimberly Copher Back, et al.*, 69. Agric. Dec. 448 (2010).

Respondent has not presented any argument or evidence to assess when considering the penalty. In the absence of evidence supporting a lesser penalty, I find that Respondent is liable to pay a civil money penalty in the amount of \$2,200.00. I also find that the circumstances warrant Respondent Justin Jenne's disqualification from participating in any manner in the exhibition, transportation, or managing of any horse for a period of one year.

## **F. Findings of Fact**

1. Justin R. Jenne is an individual whose mailing address is in Shelbyville, Tennessee, and who owns and operates Justin Jenne Stables.

2. Justin Jenne Stables is also known as Justin Jenne Stables at Frazier and Frazier Farms.
3. Justin Jenne trains horses and at the time relevant to this adjudication employed two employees.
4. APHIS VMO Dr. Peter Kirsten served as Show Veterinarian at the Spring Jubilee Charity Horse Show in Harrodsburg, Kentucky, beginning on April 16, 2009.
5. Dr. Kirsten is a licensed veterinarian, and his duties at the show in this matter involved assuring compliance with the HPA and monitoring DQPs.
6. On April 16, 2009, Justin Jenne entered a horse know as “Jose’s Flamingo Dancer” as Entry No. 107, Class No. 16, at the Spring Jubilee Charity Horse Show.
7. Mr. Jenne had trained the horse for more than one year.
8. Mr. Jenne presented the horse for pre-show examination.
9. Two DQPs examined the horse and found unilateral soreness and were prepared to issue a ticket to Mr. Jenne.
10. Dr. Kirsten disagreed with that conclusion and examined Jose’s Flamingo Dancer.
11. Dr. Kirsten’s examination was videotaped.
12. Dr. Kirsten concluded that the horse was sore within the meaning of the HPA.

#### **G. Conclusions of Law**

1. The Secretary has jurisdiction in this matter.
2. An USDA VMO concluded on palpation that Jose’s Flamingo Dancer was bilaterally sore, thereby invoking the statutory presumption of soreness.
3. Respondent’s evidence is not sufficient to rebut the presumption.



4. On April 16, 2009, Respondent Justin Jenne violated the Act when he entered the horse known as Jose's Flamingo Dancer into a show while the horse was sore.
5. Because Respondent knowingly entered the horse in an exhibition, and the horse was deemed sore, Respondent's actions were willful.
6. Sanctions are warranted in the form of a civil money penalty and disqualification from participating in any manner in exhibitions for a period of time.

### **ORDER**

Respondent Justin Jenne shall pay a civil money penalty of twenty-two hundred dollars (\$2,200.00). Within thirty (30) days from the effective date of this Order, Respondent shall send a certified check or money order in that amount made payable to the Treasurer of the United States to the following address:

USDA APHIS GENERAL  
P.O. Box 979043  
St. Louis, MO 63197-9000

Respondent's payment shall include a notation of the docket number of this proceeding.

Respondent Justin Jenne is disqualified for one uninterrupted year from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee or other device, and from judging, managing or otherwise participating in any horse show, horse exhibition, or horse sale or auction. "Participating" means engaging in any activity beyond that of a spectator, and includes, without limitation, transporting or arranging for the transportation of horses to or from equine events, personally giving instructions to exhibitors, being present in the warm up or inspection areas, or in any area where spectators are not allowed, and financing the participation of others in equine events. The disqualification shall continue until the civil penalty assessed is paid in full.

This Decision and Order in Docket No. 13-0080 shall become effective and final 35 days from its service upon Respondent unless an appeal is filed with the Judicial Office pursuant to 7 C.F.R. § 1.145.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk.

Entered this 29th day of July, 2014 at Washington, DC.

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Janice K. Bullard  
Administrative Law Judge